

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Darla Padgett, et al.,

NO. C 04-03946 JW

Plaintiffs,

**ORDER RE: LETTER FROM CINDY
BRAIN**

v.

Brian Loventhal, et al.,

Defendants.

The Court is in receipt of a letter from Cindy Brain. (See Docket Item No. 480.) Mrs. Brain is Plaintiffs' neighbor and a witness in this action. A fence separates Plaintiffs' property from the Brains' property. Defendants' actions with regard to the height of that fence is at issue in Plaintiffs' case.

A fence also separates the Brains' property from the Hunters' property. The Hunters are Plaintiffs' neighbor to the north. Defendants commenced a code enforcement action against the Brains with regard to the Brain-Hunter fence. On April 25, 2007, the Court stayed Defendants' enforcement action and ordered as follows: "No person shall alter the Brain-Hunter fence in any way until the final judgment is entered in [Plaintiffs'] federal case. This stay does not affect the rights of the Brains and the City to resolve their case. However, the Brain-Hunter fence shall not be altered or removed." (See Docket Item No. 333.)


In her letter, Mrs. Brain represents to the Court that she is currently negotiating the sale of her property. The potential buyers, Douglas and Rebecca Sayuk, have requested a letter from

1 Defendants stating that upon purchase of the Brains' property, no pre-stated penalties or violations
2 regarding the fence will transfer to the Sayuks. Defendants have refused. Mrs. Brain requests the
3 Court to issue a letter stating that the stay granted with regard to the action against the Brains will
4 transfer to the Sayuks.

5 Defendants have responded to Mrs. Brain's letter. (See Docket Item No. 483.) Defendants
6 deny receiving any request from the Sayuks. However, Defendants represent that any penalties
7 accrued by the Brains will not apply to the Sayuks. Once the purchase of the Brains' property and
8 Plaintiffs' litigation is complete, the City will start new code enforcement proceedings against the
9 Sayuks to extent the fence remains in violation of City's codes.

10 In light of Defendants' representations, the Court declines to take further action at this time.
11 The Court's previous order prohibiting alteration of the Brain-Hunter fence and any enforcement
12 action in relation to that fence remains in effect.

13
14 Dated: February 13, 2008



JAMES WARE
United States District Judge

United States District Court

For the Northern District of California

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Darla Kaye Padgett Actiontkr@aol.com
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Cindy Brain
17951 Saratoga-Los Gatos Road
Monte Sereno, CA 95030

Dated: February 13, 2008

Richard W. Wieking, Clerk

**By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy**